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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,947	02/26/2007	Mikko Nevalainen	P2853US00	7062

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DITTHAVONG MORI & STEINER, P.C.  
918 Prince Street  
Alexandria, VA 22314

EXAMINER
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GEORGEWILL, OPIRIBO

ART UNIT	PAPER NUMBER
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2617

NOTIFICATION DATE	DELIVERY MODE
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05/20/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/599,947	<b>Applicant(s)</b> NEVALAINEN, MIKKO	
	<b>Examiner</b> OPIRIBO GEORGEWILL	<b>Art Unit</b> 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-16, 18-20 and 22-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-16, 18-20 and 22-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 April 2010 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/28/10</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/27/10 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1, 27, 32, 37, 39 have been considered but are moot in view of the new ground(s) of rejection.

### ***Drawings***

3. The drawings were received on 4/27/10. These drawings are un-acceptable. Figs. 4A and 4B reference numbers 84, 84' and 84" have the same descriptive text, however, they have unique descriptive text in the specifications (see paragraph [105], user interface - joystick, display, keypad). Similarly fig. 5 references 108, 106, 104 have the same descriptive text; however, they have unique descriptive text in the specification (paragraph [119], game database, player or device database, charge database). Appropriate correction is required.

***Claim Objections***

4. Claims 2, 29 are objected to because of the following informalities:
5. Claim 2 recites the limitation "said restricted execution of said application, within predetermined limits,". Since claim 1 was amended to recite "within a predetermined functional limit", claim 2 should also recite same.
6. Claim 29 and 40 recites the phrase "said mobile terminal" but there is no antecedent basis for this in the claim.

Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

Claims that recite nothing but the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism, per se, and as such are nonstatutory natural phenomena. O'Reilly, 56 U.S. (15 How.) at 112-14. Moreover, it does not appear that a claim reciting a signal encoded with functional descriptive material falls within any of the categories of patentable subject matter set forth in Sec. 101.

... a signal does not fall within one of the four statutory classes of Sec. 101.

... signal claims are ineligible for patent protection because they do not fall within any of the four statutory classes of Sec. 101.

8. Claims 30, 31, 41, 42 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claims 30 and 4 are drawn to functional descriptive material recorded on a computer readable

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storage medium. Normally, the claim would be statutory. However, the specification, has not defined the computer readable storage medium and a person having ordinary skills in the art would include ***non-statutory*** subject matter such as a “signal” within the scope of the disclosure.

“A transitory, propagating signal ... is not a “process, machine, manufacture, or composition of matter.” Those four categories define the explicit scope and reach of subject matter patentable under 35 U.S.C. § 101; thus, such a signal cannot be patentable subject matter.” (*In re Petrus A.C.M. Nuijten*; Fed Cir, 2006-1371, 9/20/2007).

Because the full scope of the claim as properly read in light of the disclosure appears to encompass non-statutory subject matter (i.e., because the specification has not defined/exemplifies a computer readable storage medium in such as way that one having ordinary skills in the art would exclude a non-statutory signal, carrier waver, etc.) the claim as a whole is non-statutory. The examiner suggests amending the claim to include the disclosed tangible computer readable storage media, while at the same time excluding the intangible transitory media such as signals, carrier waves, etc. Any amendment to the claim should be commensurate with its corresponding disclosure. Possible acceptable amendment to the claim include “non-transitory tangible computer readable storage medium”.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. **Claims 1, 2, 4, 5, 7, 8, 9, 15, 16, 20, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36 37, 38, 39, 40, 41, 42, 43 are rejected under 35 U.S.C. 102( b) as being anticipated by Coley et al., US Pub No. 20010011253 A1**

Re claim 1, Coley discloses a method comprising:

detecting, at a mobile terminal device (paragraph [104], laptop), a user input directed to start the execution of an application on said terminal device (paragraph [46], the client module performs an initial check each time the software application is brought up)

initiating a message to a surveillance center, wherein the message indicates the execution of an application has started (paragraph [92], The software license can be validated each time the application is brought up on a computer or each time a particular feature is used; paragraph [18], auditing use of client application) and wherein the message is initiated after a predetermined period of time has passed since the application was first started or after a predetermined number of input

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actions has been input to the application (paragraph [92], the software license can also be validated in response to the expiration of a timer)

starting a restricted execution of said application within a predetermined functional limit, after said message has been initiated (paragraph [79], the Check In License procedure can be used to return a license or disable a feature (predetermined functional limit) when the user has completed use of the client application or the feature contained therein)

determining whether the message has been sent (paragraph [88], a status message indicating an error code, an indication that the server or agent is presently too busy to handle a query (message has been sent), an indication of a connection or communication failure (message has been sent); paragraph [47], The response message is returned to the client (message has been sent))

further restricting the execution of said application, within a more restrictive functional limit based on said determination (paragraph [79], the Check In License procedure can be used to return a license or disable a feature (more restrictive functional limit) when the user has completed use of the client application or the feature contained therein. This is clearly based on the determination that a message is sent (paragraph [47], response message to the client module; alternatively see paragraph [92], where Coley teaches that on returning of a null license ID the client application is disabled. Coley further teaches in paragraph [73], that the client data structure contains the authorization and license ID, and in paragraph [88] that a authorization ID indicating a failed

delivery is return. This implies that when a authorization ID status of failed delivery is returned through the client data structure, the license ID is null, since clearly it has not been given a failure, and as such, paragraph [92] necessitates the disabling of the application (further restricting based on the determination of message sent)).

The rejection of claim 1 is incorporated herein. Claims 2, 4, 5, 7, 9, 15, 16, 20, 22, 23, 25, 26 depend on claim 1 and only further limitations will be addressed below.

Re claim **2**, Coley discloses sending the message to said surveillance center (paragraph [47], after formation, the request message is sent to the license server); and said further restriction of said application, within predetermined limits, after said message has been sent (paragraph [79], the Check In License procedure can be used to return a license or disable a feature (predetermined functional limit) when the user has completed use of the client application or the feature contained therein)

Re claim **4**, Coley discloses that the message indicates the start of an execution of an application (paragraph [18], auditing use of client application)

Re claim **5**, Coley discloses that the restricted execution is further based on a time limit (paragraph [74], demonstration mode for a predefined period of time)

Re claim **7**, Coley discloses the setting up a connection to the surveillance center (paragraph [46]); sending a message to the surveillance center, said message comprising application execution related data (paragraph [47]); and

receiving an authorization to execute said application within said limits defined by said surveillance center (paragraphs [47], [48])

The rejection of claim 7 is incorporated herein. Claim 8 depends on claim 7 and only further limitations will be addressed below.

Re claim **8**, Coley discloses that said application execution related data comprises data selected from the group comprising application identification, mobile electronic terminal identification, user identification, player identification, communication parameter, and pin-code (paragraph [47])

Re claim **9**, Coley discloses that the application starts the sending of a message to said surveillance center (paragraph [46], client module performs an initial check)

Re claim **15**, Coley discloses that the message is sent periodically (paragraph [49], the client module may, at this point, start a timer for periodic checking of license validity)

Re claim **16**, Coley discloses that the application determines the number of messages to be sent and the point in time a message is sent (paragraph [49], [50])

Re claim **20**, Coley discloses the determining conditions that prevent the sending of said message (paragraph [88], clearly any of the listed status messages are indications on why a message was not sent), and wherein the execution of said application is further based on whether the conditions are present (paragraph [92], where Coley teaches that on returning of a null license

ID the client application is disabled. Coley further teaches in paragraph [73], that the client data structure contains the authorization and license ID, and in paragraph [88] that an authorization ID indicating a failed delivery is return. This implies that when a authorization ID status of failed delivery is returned through the client data structure, the license ID is null, since clearly it has not been given a failure, and as such, paragraph [92] necessitates the disabling of the application (execution said application is further based on whether the condition is present). Also see paragraph [75], where Coley clearly teaches that a software provider can force a user to attach a non-connected computer to a network access point (determining conditions that prevent the sending of said message) and that client application will not enable unless and until it check in (execution of said application is further based on whether conditions are present))

Re claim **22**, Coley discloses receiving a confirmation message that the message has been sent (paragraph [47], response message)

Re claim **23**, Coley discloses the interrupting of the execution of said application, if said message has not been sent (paragraph [92], where Coley teaches that on returning of a null license ID the client application is disabled. Coley further teaches in paragraph [73], that the client data structure contains the authorization and license ID, and in paragraph [88] that an authorization ID indicating a failed delivery is return. This implies that when a authorization ID status of failed delivery is returned through the client data structure, the license ID is null, since clearly it has not been given a failure, and as such, paragraph

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[92] necessitates the disabling of the application (interrupting the execution of said application, if said message has not been sent)

Re claim **25**, Coley discloses the downloading application software to said mobile terminal device (paragraph [107])

Re claim **26**, Coley discloses determining the actual date; comparing said actual date with time rule provided in said application; and interrupting the execution of said application, if said actual date does not meet said time rule (paragraph [74])

Re claim **27**, the claim is the receiving side of the method claim 7 and would necessitate the method of claim 7 be carried out for it to actualize. It is therefore rejected for the same reasons as claim 7 above.

The rejection of claim 27 is incorporated herein. Claim 28 depends on claim 7 and only further limitations will be addressed below.

Re claim **28**, the claim is the receiving side of the method claim 7 and would necessitate the method of claim 7 be carried out for it to actualize. It is therefore rejected for the same reasons as claim 7 above.

Re claim **29**, it has similar limitations to claim 1 that are is met by the reference above and is rejected for the same reason as anticipated as above.

Re claim **30**, it is drawn to the computer readable medium embodying a program to execute claim 1 and is rejected for the same reasons as above (see paragraph [108] showing software implementation)

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Re claim **31**, it is drawn to the computer readable medium embodying a program to execute claim 1 and is rejected for the same reasons as above (see paragraph [108] showing software implementation)

Re claim **32**, it is drawn to the apparatus by the corresponding method claim 7 and is rejected for the same reasons as above.

Re claim **33**, as applied to claim 32 above, it is drawn to the apparatus by the corresponding method claim 7 and is rejected for the same reasons as above.

Re claim **37**, it is drawn to the apparatus by the corresponding method claim 7 and is rejected for the same reasons as above.

Re claim **38**, as applied to claim 37, it is drawn to the apparatus by the corresponding method claim 7 and is rejected for the same reasons as above.

Re claim **39**, it is drawn to the system by the corresponding method claims 7 and 27 and is rejected for the same reasons as above.

Re claim **40**, it contains similar limitations to claim 27 that is met by the reference above and is rejected for the same reason as anticipated above.

Re claim **41**, it is drawn to the computer readable medium embodying a program to execute claim 27 and is rejected for the same reasons as above (see paragraph [108] showing software implementation)

Re claim **42**, it is drawn to the computer readable medium embodying a program to execute claim 1 and is rejected for the same reasons as above (see paragraph [108] showing software implementation)

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Re claim **43**, Coley discloses buffering the message based on the determination, wherein the execution of said application is further based on whether said buffer is full (paragraph [102], TCP which is known and expected to have buffering; paragraph [47], the response message (determination that message is sent). Since clearly Coley teaches that the determination is made that the message is sent, and TCP is known and expected to not buffer (buffer) based on the determination, clearly the buffer is full limitation is met also)

Re claim **36**, as applied to claim 32 above, it is drawn to the apparatus by the corresponding method claim 43 and is rejected for the same reasons as above.

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in **Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966)**, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows: (***See MPEP Ch. 2141***)

- a. Determining the scope and contents of the prior art;
- b. Ascertaining the differences between the prior art and the claims in issue;

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- c. Resolving the level of ordinary skill in the pertinent art; and
- d. Evaluating evidence of secondary considerations for indicating obviousness or nonobviousness.

**12. Claims 3, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coley et al., US Pub No. 20010011253 A1, as applied in claim 1 above, in view of Kolakowski, Victoria, S., WIPO Pub No. 200249732 A1.**

The rejection of claim 1 is incorporated herein. Claim 3 depends on claim 1 and only further limitations will be addressed below.

Re claim **3**, Coley discloses the claimed invention but is silent said application being a game. Kolakowski in analogous art discloses a method of surveyed executing (page 3, lines 22 - 28, software encryption key to authorize the wireless remote entertainment system to operate for a predetermined time or amount of usage; page 9, lines 27 - 30, functionality using upstream channel ... may be changed ... purchase key) of an application (page 9, line 27, fully interactive functionality) on a mobile terminal device (fig 1, abstract, mobile). Kolakowski further discloses the application is a game (page 4, line 15, operating a game). It would therefore have been obvious, to a person having ordinary skills in the arts, at the time the invention was made, to simply substitute the application disclosed by Coley with the game application obtaining the predictable result of the application being a game application so as to move data to the user (page 2, lines 23 – 24)

Re claim **34**, as applied to claim 32 above, it is drawn to the apparatus by the corresponding method claim 3 and is rejected for the same reasons as above.

**13. Claims 10, 11, 12, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coley et al., US Pub No. 20010011253 A1, as applied in claim 1 above, in view of Raiz et al., US Pub No. 20020164025 A1.**

The rejection of claim 7 is incorporated herein. Claim 10 depends on claim 7 and only further limitations will be addressed below.

Re claim **10**, Coley discloses the claimed invention including the outing a user-authorization request to send a message (paragraph [23], a menu can be presented asking whether the user would like to purchase a license) but does not explicitly disclose that the message is sent to the surveillance center. Raiz in analogous art discloses a method of surveyed executing of an application (see abstract, fig 1). Raiz further teaches the outputting of a user-authorization request to send a message to a surveillance center (paragraph [51], request a renewed authorization key (message) ... the user is alerted to call in or complete the registration wizard to restart account; table III, license server (surveillance center), which is clearly the only source for restarting the account). It would therefore have been obvious to a person having ordinary skills in the art, at the time the invention was made, to incorporate the teaching of Raiz into the disclosure of Coley to have the outputting of a user-authorization request to send a message, as disclosed by Coley, to the surveillance center, as disclosed by Raiz so as to deploy software more efficiently (paragraph [5]). Coley in view of Raiz further discloses detecting a user-authorization input authorizing said connection set-up (implicit from step above)

The rejection of claim 1 is incorporated herein. Claim 11 depends on claim 1 and only further limitations will be addressed below.

Re claim **11**, Coley in view of Raiz discloses the outputting a user-authorization request to perform a payment transaction (Raiz: paragraph [39], The user may be presented with a change to select ... the user will choose a desired level of subscription. Should the subscription level require payment, the user must supply payment method); detecting a user-authorization input for authorizing said payment transaction (implicit from step above) and performing said payment transaction (Raiz: paragraph [44], payment information is directed to the financial system where the payment is validated and charged)

The rejection of claim 11 is incorporated herein. Claims 12, 13 depend on claim 11 and only further limitations will be addressed below.

Re claim **12**, Coley in view of Raiz discloses wherein said authorization payment transaction is performed by charging payment device (Raiz: paragraph [27], financial and commercial function; paragraph [44]) but is silent on the payment device being onboard. It would have been obvious to one having ordinary skill in the art at the time the invention was made to payment device part of the mobile terminal device since it has been held that forming in one piece an article which has formally been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

Re claim **13**, Coley in view of Raiz discloses wherein said authorized payment transaction is performed by sending said authorization for said payment

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transaction to said surveillance center (Raiz: paragraph [44], table II, col 2, where Raiz discloses the License server (surveillance center) directs payment to the financial system. Implies receives authorization)

**14. Claims 14, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coley et al., US Pub No. 20010011253 A1, as applied in claim 1 above, in view of Raiz et al., US Pub No. 20020164025 A1 and further in view of Applicant Admitted Prior Art (henceforth "AAPA").**

The rejection of claim 11 is incorporated herein. Claim 14 depends on claim 11 and only further limitations will be addressed below.

Re claim **14**, Coley in view of Raiz discloses the claimed invention including the payment is billed to the client (Coley: paragraph [99]) but is silent on said payment transaction is charged to the next telephone bill. AAPA in analogous art discloses applications and distribution and use of application games (paragraph [6]). AAPA further discloses that application payment transaction is charged to the next telephone bill (paragraph [6]). It would therefore have been obvious to a person having ordinary skills in the art, at the time the invention was made, to incorporate the teaching of AAPA into the disclosure of Coley in view of Raiz, having the payment transaction being charged to the next telephone bill so as to conveniently pay for the application (paragraph [5])

The rejection of claim 32 is incorporated herein. Claim 35 depends on claim 32 and only further limitations will be addressed below.

Re claim **35**, Coley in view of Raiz and further in view of AAPA discloses the apparatus comprises a cellular telephone (AAPA: paragraph [6])

**15. Claim 18, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coley et al., US Pub No. 20010011253 A1, as applied in claim 1 above, in view of Meyer, Michael., "TCP Performance over GPRS", In Proc Wireless Communication and Networking Conference, 1999, WCNC, 1999 IEEE, vol 3**

The rejection of claim 1 is incorporated herein. Claims 18, 24 depend on claim 1 and only further limitations will be addressed below.

Re claim **18**, Coley discloses the claimed invention including using TCP mechanism (paragraph [102]) and confirmation message that a message has been sent (paragraph [47], response message) but is silent on the determination that the message has not been sent if a confirmation message has not been received within a defined period. Meyer in analogous art discloses a TCP system used in a mobile terminal device (abstract). Meyer further discloses the determination that a message has not been sent, if a confirmation message that said message has been sent is received within a defined time (page 1249, col 2, section III, paragraph [2], where Meyer discloses a TCP timeout (confirmation message not received during a defined time), and that the timeouts should only occur if segments (messages) are lost). It would therefore have been obvious to a person having ordinary skills in the arts, at the time the invention was made, to incorporate the teaching of Meyer into the disclosure of Coley to determine the message has been sent if a confirmation message that the message has been

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sent is not received within a defined period so as to use TCP in a GPRS network (abstract).

Re claim **24**, Coley in view of Meyer discloses that the message is sent via a general packet radio service (Meyer: page 1249, col 2, section IV, paragraph [2])

**16. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coley et al., US Pub No. 20010011253 A1**

The rejection of claim 1 is incorporated herein. Claim 19 depends on claim 1 and only further limitations will be addressed below.

Re claim **19**, Coley in view of Meyer discloses the claimed invention including TCP mechanism (paragraph [102]) but is silent on buffering of said messages not sent. However official notice is taken that at the time the invention was made, buffering of messages not sent was known and expected when TCP mechanism is used in communication. It would therefore have been obvious to a person having ordinary skills in the arts, at the time the invention was made to buffer the messages not sent so as to have re-transmission ability.

***Contact Information***

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to OPIRIBO GEORGEWILL whose telephone number is (571)270-7926. The examiner can normally be reached on Monday through Thursday, 9:00am - 5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis G. West can be reached on (571)272-7859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/OPIRIBO GEORGEWILL/  
Examiner, Art Unit 2617

/Lewis G. West/  
Supervisory Patent Examiner, Art  
Unit 2617